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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			COURSON, TANIA C	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,919

Applicant(s)

LEYDEN ET AL.

Examiner

Tania C. Courson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The second non-final rejection for claims 1-28 of the last Office action (mailed May 13, 2005) is withdrawn based on arguments from the amendment filed on May 31, 2005. The first non-final rejection is being reissued in this paper.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Youdelman et al. (US D257962).

Youdelman et al. disclose in Figures 1-3, a reflective height measuring device comprising:

With respect to claims 1-4 and 15:

- a) a wall having a generally flat front surface (Fig. 1) facing in a first direction and a peripheral edge (Fig. 2), spaced graduations on the wall (Fig. 2) relative to which a dimension of an object placed in front of the wall can be gauged (Fig. 2), a surface on the wall which reflects an image of an object located in front of the wall (Fig. 2 and the claim) and at least one of i) a depiction of at least one of a) an animate object b) an inanimate object and c) a scene ii) at least one word iii) a

- design, and iv) a logo on the wall (Fig. 2) and viewable from in front of the wall in conjunction with the spaced graduations and a reflective image from the surface on the wall (Fig. 2), wherein the wall is formed so that the shape of at least a portion of the peripheral edge is at least nominally matched in shape to a shape of at least a portion of the at least one of i) a depiction of at least one of a) an animate object b) an inanimate object and c) a scene ii) at least one word iii) a design and iv) a logo (Fig. 2);
- b) wherein the wall has a length extending in a vertical direction and a width and the graduations allow gauging of the height of an object located in front of the wall (Fig. 2);
- c) wherein the length of the wall is substantially greater than the width of the wall (Fig. 2);
- d) wherein a wall comprises a first layer (Fig. 3) having a front and rear and at least a portion of the at least one of i) a depiction of at least one of a) an animate object b) an inanimate object; and c) a scene; ii) at least one word iii) a design and iv) a logo is applied to the rear of the first layer and viewable through the first layer at the front of the first layer (Fig. 2);
- e) wherein the apparatus has a front and rear (Fig. 1) with a thickness between the front and rear of the apparatus (Fig. 1) and an areal extent (Fig. 2) and the apparatus has a substantially uniform thickness over substantially the entire areal extent of the apparatus (Fig. 2).

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For examination purposes the examiner has chosen "a depiction of an inanimate object", the inanimate object being one of two rulers as depicted in Figure 2 as is shown in the reflective height measuring device.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Youdelman et al. in view of Noble (US 6,845,580 B2).

Youdelman et al. disclose a reflective height measuring device, as stated above in paragraph 3.

Youdelman et al. do not disclose wherein a first layer is a clear plastic material, and wherein a first layer has a thickness between the front and rear of the first layer that is in the range of .04-.12 inches.

Noble teaches a reflective device that consists of wherein a first layer is a clear plastic material (column 5, lines 24-27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the reflective height measuring device of Youdelman et al., so as to include wherein a first layer is a clear plastic

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material, as taught by Noble, so as to provide an additional means for depicting an object onto the wall during use of the device.

Regarding the thickness of the layer: Youdelman et al. and Noble discloses a first layer having a thickness but does not disclose a particular value for this parameter. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a first layer having a thickness between the front and rear of the first layer that is in the range of .04-.12 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the "optimum range" involves only routine skill in the art.

In re Aller, 105 USPQ 233. Therefore, one skilled in the art would change the optimum range of the layer in order to suit the needs of the user of the device.

6. Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Youdelman et al. in view of Crocker (US 1,953,796).

Youdelman et al. disclose a reflective height measuring device, as stated above in paragraph 5.

Youdelman et al. further disclose the following:

- a) wherein a wall comprises a first layer (Fig. 3) having a front and rear and at least a portion of the at least one of i) a depiction of at least one of a) an animate object b) an inanimate object; and c) a scene; ii) at least one word iii) a design and iv) a logo is applied to the rear of the first layer and viewable through the first layer at the front of the first layer (Fig. 2).

Youdelman et al. do not disclose the following:

- a) wherein the rear of a first layer is coated with a first material that is viewable through the first layer and reflects an image of an object located in front of the first layer;
- b) wherein the first material comprises aluminum.
- c) wherein the first material comprises a metal material that is applied in a vacuum chamber;
- d) wherein the wall comprises a second layer (Fig. 7, C) applied at the rear of the first layer;
- e) wherein the second layer has a front and rear and a thickness between the front and rear of the second layer that is in the range of .04-.12 inches;
- f) wherein the second layer comprises High Impact Polystyrene;
- g) wherein the second layer is secured to the first layer through a pressure sensitive adhesive.

Crocker teaches a reflective device that consists of wherein the rear of a first layer is coated with a first material (Fig. 4, silver 11) that is viewable through the first layer and reflects an image of an object located in front of the first layer (Fig. 8), wherein the first material comprises a metal material (Fig. 4), wherein the wall comprises a second layer (Fig. 4, backing 16) applied at the rear of the first layer and wherein the second layer is secured to the first layer through a pressure sensitive adhesive (Fig. 4, adhesive 13). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further

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modify the reflective height measuring device of Youdelman et al., so as to include a wall comprising a first layer, a second layer and a first material, as taught by Crocker, so as to reduce damage from impact during use of the device.

For examination purposes the examiner has chosen “a depiction of an inanimate object”, the inanimate object being one of two rulers as depicted in Figure 2 as is shown in the reflective height measuring device of Youdelman et al.

With regard to claim 9: The method of forming (i.e. applied in a vacuum chamber) the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Therefore, one skilled in the art would change the method of forming in order to suit the needs of the user of the device (i.e. to increase the strength and durability).

Regarding claims 8 and 12: Youdelman et al. and Crocker disclose the first material made of a silver (Fig. 4) and the second layer comprising a metal backing (Fig. 4) material. The particular type of material used to make the first material and the second layer, absent any criticality, is only considered to be the use of a “preferred” or “optimum” material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant’s apparatus, i.e., suitability for the intended use of Applicant’s apparatus. See In re Leshin, 125 USPQ 416 (CCPA 1960) where the court

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stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious. Therefore, one skilled in the art would change the type of material of the first material and the second layer in order to suit the needs of the user of the device.

Regarding the thickness of the layer: Youdelman et al. and Crocker disclose a second layer having a thickness but does not disclose a particular value for this parameter. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a second layer having a front and rear and a thickness between the front and rear of the second layer that is in the range of .04-.12 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the "optimum range" involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, one skilled in the art would change the optimum range of the layer in order to suit the needs of the user of the device.

7. Claims 14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Youdelman et al. in view of Steckler (US 2,369,988) and Noth (US D116,049).

Youdelman et al. disclose a reflective height measuring device, as stated above in paragraph 5.

Youdelman et al. further disclose the wall having a height and a width and first and second sides spaced in a widthwise direction (Fig. 2), wherein the at least portion of a peripheral edge has adjacent contiguous portions which extend generally along first and second transverse lines (Fig. 2).

Youdelman et al. do not disclose the following:

- a) wherein the portion of the peripheral edge is formed through laser cutting;
- b) wherein the portion of the peripheral edge is non-straight;
- c) wherein the wall has a height and a width and first and second sides spaced in a widthwise direction and the portion for the peripheral edge on the first spaced side of the wall has a non-straight configuration over more than one-half the height of the wall at the first spaced side.
- d) wherein at least portion of the peripheral edge has adjacent contiguous portions which extend generally along first and second transverse lines, the first and second lines defining an acute angle;
- e) wherein there is at least one opening through the wall, the opening fully surrounded and capable of receiving a fastener to facilitate mounting of the wall to a support;
- f) wherein the wall has a nominally squared shape with four transverse edge portions and one of the transverse edge portions has a first length and a running length of the one transverse edge portion is substantially greater than the first length.

Regarding claim 14: Where a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with the evidence establishing an unobvious difference between the two. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). There is obviously a method in forming

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the device found in Youdelman et al., Steckler and Noth, other than through laser cutting, yet producing the same result a shaped device.

Steckler teaches a measuring device that consists of wherein a portion of a peripheral edge in non-straight (Fig. 1), and wherein there is at least one opening through a wall (Fig. 1, opening 14), the opening fully surrounded and capable of receiving a fastener to facilitate mounting of the wall to a support (Fig. 1) and wherein the wall has a nominally squared shape with four transverse edge portions (Fig. 1) and one of the transverse edge portions has a first length (Fig. 1) and a running length (Fig. 1) of the one transverse edge portion is substantially greater than the first length (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the reflective height measuring device of Youdelman et al., so as to include a non-straight peripheral edge and an opening and a running length greater than the first length, as taught by Steckler, so as to provide an increase in the interest of the user during use of the device and so as to provide a means of supporting the device during use of the device.

With respect to claim 17: the shape of the non-straight configuration, i.e., over more than one-half the height of the wall, absent any criticality, are only considered to be obvious modifications of the shape of the non-straight configuration of the wall (Fig. 1) disclosed by Youdelman et al. and Steckler as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the

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intended use of the invention. See *In re Dailey*, 149 USPQ 47 (CCPA 1976). Therefore, one skilled in the art would change the shape of the non-straight configuration of the wall in order to suit the needs of the user of the device.

Noth teaches a measuring device that consists of first and second lines defining an acute angle (Fig. 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the reflective height measuring device of Youdelman et al., so as to include first and second lines defining an acute angle, as taught by Noth, so as to provide an increase in the interest of the user during use of the device.

8. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Youdelman et al. in view of Crocker.

Youdelman et al. disclose a reflective height measuring device, including the following:

- a) a wall having a generally flat front surface (Fig. 1) facing in a first direction and a peripheral edge (Fig. 2), spaced graduations on the wall (Fig. 2) relative to which a dimension of an object placed in front of the wall can be gauged (Fig. 2), a surface on the wall which reflects an image of an object located in front of the wall (Fig. 2 and the claim) and at least one of i) a depiction of at least one of a) an animate object b) an inanimate object and c) a scene ii) at least one word iii) a design, and iv) a logo on the wall (Fig. 2) and viewable from in front of the wall in conjunction with the spaced graduations and a reflective image from the surface on the wall (Fig. 2);

- b) the at least one of i) a depiction of at least one of a) an animate object b) an inanimate object and c) a scene ii) at least one word iii) a design, and iv) a logo located between the first layer and the second layers so as to be viewable from in front of the wall through the first layer (Fig. 2);
- c) wherein a reflective coating is the second layer over the at least one of a) an animate object b) an inanimate object and c) a scene ii) at least one word iii) a design, and iv) a logo to allow an image of an object located in front of the wall to be viewable through the first layer (Fig. 2).

For examination purposes the examiner has chosen “a depiction of an inanimate object”, the inanimate object being one of two rulers as depicted in Figure 2 as is shown in the reflective height measuring device of Youdelman et al.

Furthermore, for examination purposes the examiner has interpreted Figure 2 of Youdelman et al. to show “a depiction of an inanimate object” which is “located between the first layer and the second layers”. Figure 2 clearly shows that the two rulers are sandwiched between what would be a rear layer and a clear front layer while maintaining reflectivity.

Youdelman et al. do not disclose the following:

- a) a wall comprising a first layer and a second layer;
- b) wherein a reflective coating is applied to the second layer.

Crocker teaches a reflective device that consists of wherein a wall comprises a first layer (Fig. 4, base 10) and a second layer (Fig. 4, backing 16) and wherein a reflective coating (Fig. 4, silver 11) is applied to the second layer. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the reflective height measuring device of Youdelman et al., so as to include a wall comprising a first layer and a second layer and a reflective coating applied to the second layer, as taught by Crocker, so as to reduce damage from impact during use of the device.

9. Claims 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Youdelman et al. in view of Crocker.

Youdelman et al. disclose a reflective height measuring device and associated method, including the following:

- a) providing a wall comprising a first layer with a front and a rear (Fig. 2);
- b) forming at least one of i) a depiction of at least one of a) an animate object, b) an inanimate object, and c) a scene; ii) at least one word; iii) a design, and iv) a logo on the wall and viewable through the first layer at the front of the first layer, providing graduations on the first layer relative to which a dimension of an object placed in front of the first layer can be gauged (Fig. 2), wherein a shape of at least a portion of the peripheral edge is at least nominally matched in shape to a shape of at least a portion of the at least one of a) an animate object, b) an inanimate object, and c) a scene; ii) at least one word; iii) a design, and iv) a logo (Fig. 2);

- c) wherein the step of coating the rear of the first layer comprises coating the rear of the first layer over the at least one least one of i) a depiction of at least one of a) an animate object, b) an inanimate object, and c) a scene; ii) at least one word; iii) a design, and iv) a logo (Fig. 2).

For examination purposes the examiner has chosen “a depiction of an inanimate object”, the inanimate object being one of two rulers as depicted in Figure 2 as is shown in the reflective height measuring device of Youdelman et al.

Youdelman et al. do not disclose the following:

- a) coating the rear of the first layer with a first material that is viewable through the first layer and capable of reflecting an image of an object located in front of the first layer;
- b) further comprising the step of applying a second layer at the rear of the first layer;
- c) wherein the step of applying the second layer comprises bonding the second layer to the first layer through a pressure sensitive adhesive;
- d) a first material that comprises metal;
- e) cutting the first layer to define a peripheral edge;
- f) the step of cutting the first layer comprises simultaneously cutting the first and second layers;

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- g) wherein the step of simultaneously cutting the first and second layers comprises simultaneously laser cutting the first and second layer;
- h) wherein the step of coating the rear of the first layer comprises vacuum coating the rear of the first layer;

Crocker teaches a reflective device and associated method that consists of coating the rear of the first layer with a first material (Fig. 4, silver 11) that is viewable through the first layer and capable of reflecting an image of an object located in front of the first layer (Fig. 8), further comprising the step of applying a second layer (Fig. 4, backing 16) at the rear of the first layer (Fig. 4), wherein the step of applying the second layer comprises bonding the second layer to the first layer through a pressure sensitive adhesive (Fig. 4, adhesive 13), a first material that comprises metal (Fig. 4, silver 11). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the reflective height measuring device of Youdelman et al., so as to include a wall comprising a second layer and a first material, as taught by Crocker, so as to reduce damage from impact during use of the device.

Regarding claims 23-24 and 27: Where a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with the evidence establishing an unobvious difference between the two. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). There is obviously a method in forming the device found in Youdelman et al. and Crocker, other than through laser cutting, yet producing the same result a shaped device.

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With regard to claim 26: The method of coating (i.e. vacuum coating) the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Therefore, one skilled in the art would change the method of coating in order to suit the needs of the user of the device (i.e. to increase the strength and durability).

Response to Arguments

10. Applicant's arguments filed May 31, 2005 have been fully considered and are persuasive, with respect to claims 4, 8 and 21. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Youdelman et al. (US D257,962), Noble (US 6,845,580 B2), Crocker (US 1,953,796), Steckler (US 2,369,988) and Noth (US D116,049).

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.


The fax number for this Organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
August 8, 2005


G. BRADLEY BENNETT
PRIMARY EXAMINER